

Employer's Use of Social Networking Sites in Applicant Screening: An Unethical and Potentially Illegal Practice

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Over the past few years, online background checks have become popular. Employers are increasingly looking at job applicants' social networking sites (e.g., Facebook, LinkedIn, and Twitter) as well as other rating sites such as Glassdoor.com to justify rejecting applicants [1]. Several organizational researchers have voiced their concern about the ethicality of this practice calling employers as being socially irresponsible [2]. Others (Davidson, et al.) have analyzed the risks and benefits to employers in conducting these online background checks [3]. In this editorial, I argue that these online background checks are not only unethical; but they may also put the employer in a legal jeopardy of violating Federal and State Laws.

According to the 2013 CareerBuilder survey conducted online within the U.S. and Canada, which polled 5,518 job seekers and 2,775 hiring managers, 44% of the hiring managers (N = 1,221) stated that they would research the job applicants on Facebook, 27% would monitor the candidate's Twitter accounts [2]. This reflects an increase from 37% of hiring managers (N = 852) polled in the 2012 CareerBuilder survey (N = 2,303) who stated that they used information from social networking sites to aid them in making hiring decisions [4]. Of the employers that screened potential job candidates using social networking sites (SNSs), a vast majority (65%) looked for information to verify if the candidate presented himself/herself professionally; 51% assessed the candidate's fit to the company culture; 45% learned more about the candidate's qualification; and only 12% looked for reasons not to hire the candidate [4]. What is new in the 2013 CareerBuilder survey findings is that 23% of surveyed employers are now searching for candidate's information on other rating sites such as Yelp.com and Glassdoor.com [3].

Given the sustained widespread use of SNSs to screen potential job candidates over the past years, it is expected that this practice to continue affecting many human resource functions such as recruitment, hiring, promotion, training, performance management, and termination. For example, a female server at Chilli's restaurant in California has recently been fired over her Facebook post in which she threatened to spit on the customer if seeing him next time for leaving a poor tip [5]. Although this firing decision may be job-related as spitting on customers is considered a personal assault in the state of California, other employment decisions based on a Facebook post that have been made are not quite job-related. For example, American Medical Response of Connecticut was accused of violating the National Labor Relations Act when they fired an emergency medical technician over her Facebook post in which she disparaged her supervisor [6]. According to the complaint filed on the employee's behalf, the employer violated the NLRA because the employee engaged in a "protected activity" under labor law.

Based on the above discussion, employers face several challenges when it comes to using SNSs as an employment screening tool because of the following. First, the State of Maryland recently passed a law called "Password Protection Act" which prohibits employers from asking job candidates for their Facebook account's usernames and passwords [7]. This means that unless an employer is the candidate's friend, access to his/her SNS is deemed illegal if his/her username and password are

obtained coercively. Second, it is not yet established whether there is validity evidence in a SNS post. Without validity evidence, the employers will risk violating U.S. Equal Employment Opportunities (EEO) laws [8]. The lack of standardization across SNS profiles makes it difficult if not impossible to achieve reliability and validity in profile evaluation. Third, the same content profile may be assessed differently across male and female applicants. In a between-subjects design study that I conducted last year, I randomly assigned a sample of 123 upper level undergraduate business students to reviewing two hypothetical scenarios: (a) a social profile *faux pas*, defined as having an improper comment left by friends referencing the use of illegal drugs or alcohol, or of sexual nature; and (b) a control scenario; defined as having no profile *faux pas*. Participants in both conditions played the role of a hiring manager reviewing candidates for a supervisory position. I found that women were less likely than men to post an improper comment on their friends' social networking site. However, when an improper comment was found on a social networking profile, women were penalized more so compared to men when it comes to getting a job offer. Speaking differently, women were almost twice as likely to be rejected from getting an interview or job offer as were men having the same improper comment posted on their social networking sites [9]. These findings, pending their replication in a field setting, potentially mean that employers might face legal challenges when having double standards when evaluating male vs. female applicants using their social networking sites. Although currently employers are not required to disclose which information they used while searching for applicant information on a social networking site for employment screening purposes, based on the above findings, they are cautioned against potential litigation alleging discrimination based on sex. Furthermore, if the improper content is not deemed job-related, employers might run the risk of violating the U.S. Civil Rights Act, Title VII.

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